

# **EXHIBIT A**

# New York Hospital Queens

56 Main Street, Flushing, NY 11355 / Tel. 718-670-1426 / Fax. 718-661-7746

## **Department of Emergency Medicine**

February 26, 2008

Jose L. Velez, Esq.  
Assistant Attorney General  
New York State Department of Law  
Litigation Bureau—24<sup>th</sup> Floor  
120 Broadway  
New York, NY 10271

Re: Estate of Valerie Young by Viola Young, Administratrix, et al, v. State of New York  
Office of Mental Retardation and Developmental Disabilities, et al

Dear Mr. Velez:

At your request, I have reviewed the following material in the above matter in order to formulate my opinion on the medical care given to Valerie Young:

Summons;  
Investigation of Consumer Death, stamped "Young 11/07", pages  
0001 to 0241;  
Medical records, 2004-2005, stamped "Young", pages 7628 to 8797;  
"Minor Occurrence" forms, 11/30/04; 12/1/04; 12/10/04; 12/21/04; 12/23/04;  
12/24/04; 1/2/05; 1/9/05; 1/18/05; 1/25/05; 1/27/05; 2/11/05; 3/10/05;  
3/14/05; 3/17/05; 3/22/05; 3/28/05; 4/7/05; 5/4/05.

Valerie Young was a 49 year old woman who had resided at the Brooklyn Developmental Center since 1990. She had a history of profound mental retardation, seizure disorder, schizoaffective disorder, tardive dyskinesia, constipation, right brachial plexopathy, and left foot drop due to mononeuropathy. She had a hemorhoidectomy in 1998 and a fractured right index finger in 2002. She had a normal echocardiogram and a negative venous duplex ultrasound in 2001. She had frequent episodes of agitation, aggressive behavior and behavioral decompensation requiring psychiatric hospitalization and/or adjustment of her psychotropic medications. Her medications at the time of her death were Inderal, Klonopin, Topomax, Prevacid, Remeron, Vitamin B, Zyprexa, Tegretol, Colace, Metamucil, and Fleet's enema.

In March of 2005, Ms. Young was noted to have worsening of her gait problems and increasing falls. In April, 2005, she had an extensive annual physical and psychiatric evaluation that included neurological consultation, x-rays of the lumbar spine, and

physical therapy evaluation. X-rays of her lumbar spine were negative. An EMG was scheduled for 6/3/05 to evaluate her gait disturbance and foot drop.

Because of frequent falls, her medication regimen was adjusted with reduction in her Zyprexa dose. After a fall that caused a laceration of her scalp on 5/20/05, a wheelchair was used for "all mobility needs" although she continued to have physical therapy and was ambulated with assistance. On 5/27/05, she was noted to have bilateral ankle edema (swelling) but had no calf tenderness and a negative Homann's sign (a physical examination test for deep vein thrombosis). Her edema was assumed to be positional, (i.e., her legs in a prolonged dependent position) and leg elevation during rest periods was recommended.

On 6/19/05 Ms. Young collapsed in the shower. Resuscitative efforts were instituted by the staff including CPR, intravenous dextrose, and oxygen. After CPR, she again became responsive and was agitated. On the arrival of the paramedics, Ms. Young was given intravenous atropine and was intubated for ventilatory support. She was transported to the hospital where she was pronounced dead shortly thereafter. At autopsy she was found to have bilateral pulmonary embolism and bilateral deep vein thrombosis.

In my opinion, the oversight, monitoring, evaluation, and treatment of Ms. Young was thorough and according to the accepted standard of care. When it was noted she was not only having increasing gait disturbance but increasing frequency of falls in April, 2005, she was referred for further evaluation, and the appropriate restrictions were placed on her activities to prevent further injury. When her ankle edema was noted on 5/27/05, her physician made the completely reasonable diagnosis of positional or dependent edema. That diagnosis was reasonable for at least three reasons—previous evaluation of her edema had been negative for deep vein thrombosis in 2001 when she had a negative venous duplex ultrasound; her examination was non-diagnostic for deep vein thrombosis in that her legs were non-tender; and her edema was bilateral. Typical physical findings in deep vein thrombosis are unilateral edema, calf tenderness, and/or pain on ambulation, none which she had. Recognizing that her edema may have been aggravated by her periodic confinement to a wheelchair, her physician recommended leg elevation, which is the usual treatment for dependent edema.

It is further my opinion that her care providers could not have reasonably anticipated that Ms. Young would develop bilateral deep vein thrombosis and fatal pulmonary embolism. Ms. Young had none of the currently accepted risk factors or symptoms that are recognized to increase the likelihood of a diagnosis of deep vein thrombosis, which are: active cancer; recently bedridden for major surgery; unilateral calf or leg edema; paralysis or a leg cast in the recent past; localized calf tenderness; collateral superficial veins. And the fact that she continued to receive physical therapy, continued to ambulate with assistance at her facility, and appeared to remain completely asymptomatic for the next three weeks until her death would have reinforced the impression that she was not at risk for any serious condition.

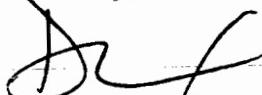
At the time of Ms. Young's collapse on 6/19/05, immediate and appropriate measures were taken to provide emergency care and resuscitation. According to the records there was prompt recognition of her agonal state and notification and rapid response of the nurse and physician on site. In fact, although Ms. Young initially was observed to be not breathing and without a pulse, the resuscitative measures instituted by the staff were sufficient to revive her to the point of responsiveness and agitation until EMS arrived to take over her care.

Therefore, in summary, it is my opinion that Ms. Young was treated according to the accepted standard of care both prior to and at the time of her collapse on 6/19/05. I have formulated these opinions based on the following qualifications: my board certifications in internal medicine and emergency medicine; my experience as a clinician for more than 30 years treating many patients with both deep vein thrombosis and pulmonary embolism; my experience as a teacher of medical students and resident physicians in various specialties on the presentation and treatment of deep vein thrombosis and pulmonary embolism; and my experience in the last few years treating many patients with developmental disabilities in the Emergency Department at New York Hospital Queens, which is a major referral source for care for a local center for patients with developmental disabilities.

That latter experience has demonstrated to me that the treatment of these patients is challenging and complex. As they are often unable to articulate their needs, precisely describe their symptoms, or cooperate with examination and testing, it requires both patience and attention to the smallest nuances of behavior to make an accurate diagnosis. While I did not personally observe the care administered to Ms. Young, a review of her medical records demonstrates an ongoing process of attention to Ms. Young's needs and well-being. From ensuring that she had good tooth brushing to providing stimulation during activity periods to dealing with and addressing her aggressive behavior without over-sedating her, there is evidence of ongoing monitoring and follow-up to ensure that care plans were carried out and symptoms were expeditiously addressed.

I am being compensated for my time at the rate of \$350/hour for record review and report preparation. Attached to this report is a current copy of my curriculum vitae listing my qualifications and my publications. Also attached is a list of cases in which I have served as a medical expert and in which I have been deposed or testified in the preceding four years.

Sincerely,



Diane M. Sixsmith, M.D., M.P.H., FACEP

## CURRICULUM VITAE

**Diane M. Sixsmith, M.D., M.P.H., FACEP**  
**Department of Emergency Medicine**  
**New York Hospital Queens**  
**56-45 Main Street**  
**Flushing, New York 11355**

Work Telephone: (718) 670-1426  
Facsimile: (718) 661-7746; (212) 749-1514  
Home Telephone: (212) 749-7697  
E-mail: [dmsixsmi@nyp.org](mailto:dmsixsmi@nyp.org)

### **EDUCATION:**

Trinity College, Washington, D.C., B.A., Cum Laude, 1969  
Major Field: English Literature; Minor Fields: Chemistry, Biology, Theology

University of Pittsburgh School of Medicine, Pittsburgh, PA.  
M.D., 1973

Columbia University School of Public Health, New York, New York  
M.P.H. in Health Administration, 1977

### **PROFESSIONAL TRAINING:**

Internship, Straight Medicine, Harlem Hospital Center,  
in Affiliation with the College of Physicians and Surgeons, New York, New York  
July 1, 1973 - June 30, 1974

Residency, Internal Medicine, Harlem Hospital Center  
July 1, 1974 - June 30, 1976

### **ACADEMIC APPOINTMENTS:**

1994 – Present Assistant Professor of Emergency Medicine in Clinical Medicine, Weill Medical College of Cornell University

1994 - 2001 Co-Chief, Division of Emergency Medicine, Departments of Medicine and Surgery

1992 - 1994 Assistant Clinical Professor in Medicine, New York University School of Medicine and Bellevue Hospital Center

1989 - 1992 Instructor in Medicine, New York University School of Medicine and Bellevue Hospital Center

1987 - Present Adjunct Professor, Department of Allied Health, Borough of Manhattan Community College, City University of New York; Medical Director, Paramedic Training

1976 - 1980 Instructor in Clinical Medicine, Department of Medicine, Columbia University College of Physicians & Surgeons,

1976 - 1982 Faculty, Emergency Medicine, Physicians Assistant Program, Harlem Hospital Center & the Sophie Davis School of Biomedical Education of the City University of New York

**HOSPITAL APPOINTMENTS:**

1992 - Present

Chairman, Department of Emergency Medicine, New York Hospital Medical Center of Queens (formerly Booth Memorial Medical Center), Flushing, New York

1997 - 1999

Director, Department of Emergency Medicine, New York Flushing Hospital, Flushing, New York

1992 – 1998

Attending Physician, Emergency Department, Hudson Valley Hospital Center, Peekskill, NY

1980 - 1992

Medical Director, Emergency Department, New York Downtown Hospital (formerly New York Infirmary-Beekman Downtown Hospital), New York, New York

1980 - 1993

Attending Physician, Department of Medicine, New York Downtown Hospital

1977 - 1980

Chief of Emergency Services, Harlem Hospital Center, New York, New York

1976 - 1979

Staff Physician, Rikers Island Health Services, Montefiore Hospital and Medical Center, New York City

**AWARDS AND HONORS:**

Fellow, American College of Emergency Physicians, awarded 1989

**OTHER PROFESSIONAL POSITIONS:**

Reviewer, Academic Emergency Medicine, 1999-present

Member, Board of Professional Medical Conduct, New York State Department of Health, 2004-present

Consultant, Research Triangle Institute, Center for the Study of Social Behavior, Research Triangle Park, N.C., Medical Costs of Drug Abuse, 1977 - 1980

Consultant, New York County Health Services Review Organization.  
1977 - 1984

**LICENSE AND CERTIFICATIONS:**

New York State License - 122203 issued July, 1974

DEA - AS6300723

Diplomate, American Board of Emergency Medicine, October, 1986; Recertified, December, 1996; November, 2006

Diplomate, American Board of Internal Medicine, June 1976

Diplomate, National Board of Medical Examiners, March 1974

Licensed Physician, New York State, Registration No. 122203

Certified Basic & Advanced Cardiac Life Support Instructor

Certified Advanced Trauma Life Support Instructor

Certified Pediatric Advanced Life Support Instructor

**COMMITTEE MEMBERSHIPS:**

Chairman of the Medical Board, 2003-2004; Vice Chairman of the Medical Board, 1996—2002;  
Secretary of the Medical Board, 1994-1996; New York Hospital Medical Center of Queens

Member, Board of Trustees, New York Hospital Medical Center of Queens, 1998—2004

Member, Board of Directors, Heritage Affiliate (New York City, Long Island, New Jersey, Connecticut), American Heart Association, 1999—2004

Member, Board of Directors, National Marfan Foundation, 2004—present

Member, Board of Directors, New York Heart Association, 1984 - 1990;  
1992 - 1999

President, American Heart Association, New York City Affiliate, 1997-1999; President-Elect, 1995-1997

Member, Board of Directors, New York Chapter, American College of Emergency Physicians, 1991 - 1994

Member, Advisory Council, Emergency Medicine Section, New York Academy of Medicine, 1993 - Present

Woman Liaison Officer, Women in Academic Medicine, Association of American Colleges, 1994 - 2000

Chairman, Practice Management Committee, New York Chapter American College of Emergency Physicians, 1990 - 1992

Chairman, Council on Community Programs, New York Heart Association 1989 - 1993

Chairman, Resource Council, New York Heart Association, 1993 - 1997

National Faculty, ACLS and BCLS, American Heart Association, 1984 - 1990

Chairman, New York Heart Association Subcommittee on Hospital Training, 1982 - 1987

Chairman, New York Heart Association Emergency Cardiac Care Committee, 1987 - 1989, Member 1981 - 1989

Member, N.Y.C. Regional Emergency Medical Services Council 1982 - 1989

Chairman, Regional Emergency Medical Services Council 1984 - 1988

Member, N.Y.C. E.M.S. Advanced Life Support Committee 1978 - Present

Member, New York City EMS Committee on General Emergency Department Standards, 1977 - 1984

Chairman, New York City Medical Advisory Committee Subcommittee on Paramedic Training & Testing - 1980 - 1983

Consultant, New York State Department of Substance Abuse Services Task Force on PCP, 1979 - 1981

**PROFESSIONAL SOCIETIES:**

Member, Society for Academic Emergency Medicine, 1993 - Present  
Member, American College of Emergency Physicians, 1986 - Present  
Member, American College of Physicians, 1990 - 1994  
Member, American Women's Medical Association, 1986 - 2000

**BIBLIOGRAPHY**

**Peer Review Journals:**

Sixsmith, D., "Case Studies in Acute Aortic Dissection: Strategies to Avoid a Catastrophic Outcome," ASHRM Journal, 2005, Vol. 25, No.2:15-18.

Cregin, R., Segal-Maurer, S., Weinbaum, F., Rahal, J., Karbowitz, S., Sixsmith, D., Cassata, V., Danek, M., Battelman, D., Callahan, M., "Multidisciplinary Approach to Improving Treatment of Community Acquired Pneumonia," American Journal of Health-System Pharmacy, February 15, 2002, Vol. 59, No. 4:364-68.

McClain, W., Shields, C., Sixsmith, D., "Autonomic Dysreflexia Presenting as a Severe Headache," American Journal of Emergency Medicine, May, 1999, Vol.17, No. 3:238-40.

Lee, E., Rosenberg, C., Sixsmith, D., Pang, D., "Does a Physician-Patient Language Difference Increase the Probability of Hospital Admission?", Academic Emergency Medicine, January, 1998, Vol. 5, No. 1: 86-89.

Tasso, S., Shields, C., Rosenberg, C., Sixsmith, D., Pang, D., "Effectiveness of Selective Use of Intravenous Pyelography in Patients Presenting to the Emergency Department with Ureteral Colic," Academic Emergency Medicine, August, 1997, Vol. 4, No. 8: 780-784.

Sixsmith, D., Weissman, L, & Constant, F, "Telephone Follow-up for Case Finding of Domestic Violence in an Emergency Department," Academic Emergency Medicine, April, 1997, Vol. 4, No. 4: 301-304.

Weinbaum, F., Lavie, S., Danek, M., Sixsmith, D., Heinrich G., & Mills, S., "Doing It Right the First Time: Quality Improvement and the Contaminant Blood Culture," Journal of Clinical Microbiology, March, 1997, V. 35, No. 3: 563-565.

Shields, C. & Sixsmith, D., "Treatment of Moderate to Severe Hypothermia in an Urban Setting," Annals of Emergency Medicine, October, 1990, V. 19, No. 10:1093--1097.

Hammer JS; Jones JW; Lyons JS; Sixsmith D; Affiando E , "Measurement of Occupational Stress in Hospital Settings: Two Validity Studies of a Measure of Self-reported Stress in Medical Emergency Rooms," General Hospital Psychiatry, 1985 Apr; 7(2):156-62.

Sixsmith, D. & Goldman, F., "The Medical cost of Drug Abuse in an Inner-City Community, American Journal of Public Health, May 1979, Vol 69, No. 5:505-7.

### **Abstracts**

Chen, P., Sixsmith, D., "Early Treatment Unit Does Not Improve Hospital Length of Stay for ED Boarders," Academic Emergency Medicine, May, 2007, Vol 14, No. 5, Supp 1, S54.

Shuchat, S., Sixsmith, D., Hei Shun Yu, "Perception of Language as a Barrier to Care among Non-English Speaking Patients," Academic Emergency Medicine, May, 2007, Vol 14, No. 5, Supp 1, S201.

Also presented at the Fourth Mediterranean Emergency Medicine Conference, Sorrento, Italy, September 19, 2007.

Sixsmith, D., Rosenberg, C., Silber, S., Leviton, R., Schor, J., Leo, P., "Excess Length of Stay in the ED Increases Inpatient Length of Stay," Academic Emergency Medicine, May, 2000, Vol 7, No. 5: 544.

Sixsmith, D., Weinbaum, F., Chan, S., Nussbaum, M., Magdich, K., "Reduction of Hemolysis of Blood Specimens Drawn from ED Patients for Routine Chemistry Tests by Use of Low Vacuum Collection Tubes," Academic Emergency Medicine, May, 2000, Vol 7, No.5:525.

Aziz, G., Karbowitz, S., Gumpeni, R., Sixsmith, D., Rosenberg, C., Tavares, J., "Randomized Trial to Study Helium:Oxygen as a Delivery Vehicle to Nebulize Albuterol in Acute Asthma Exacerbation in the Emergency Department," Academic Emergency Medicine, May 1998, Vol. 6, No. 5.

Shields, C., & Sixsmith, D., "Isolated Prehospital Hypotension in Blunt Trauma," Academic Emergency Medicine, May, 1997, Vol. 5, No. 5.

### **Book Chapters**

Sixsmith, D., "Approach to Multiple Trauma," and "Head Trauma," in Pediatric Emergency Medicine, Self-Assessment and Review, 2nd Edition edited by Rubin, D., Caple, S., Conway, E., and Barkin, R., St Louis, Missouri: Mosby Press, 1998.

Sixsmith, D., & Rehm, C., "Accidents and Emergencies," in The Women's Complete Healthbook, Edited by Epps, R., and Stewart, S., Delacorte Press, 1995.

Sixsmith, D., "Food Poisoning," House Calls, edited by Couzens, G., Simon and Schuster, New York, 1993.

### INVITED LECTURES

Medical Liability Mutual Insurance Company Annual Risk Management Seminar, "Top Five Risk Management Issues in Your ED," New York, NY, November 4, 2005.

Risk Management and Patient Safety Institute, "High Risk Areas in Emergency Medicine," Minnesota and North Dakota, September 13-17, 2004.

Risk Management and Patient Safety Institute, "Emergency Medicine: Focusing on High Risk Areas", Audio Conference, 7/21/2004.

Marfan Syndrome Symposium, "Emergency Management of Aortic Dissection, Cedars-Sinai Medical Center, Los Angeles, CA, 7/9/2004.

Philadelphia Area Society for Healthcare Risk Management, "Top Five Conditions Leading to ER Malpractice Claims", Plymouth Meeting, PA., 5/20/2004.

Risk Management and Patient Safety Institute, "High Risk Conditions Leading to Emergency Room Malpractice Claims," St. Joseph, MI., 3/30-31/2004.

Risk and Quality Conference, Providence Health System, "How to Make the ED Safer," Seattle, WA., 3/25/2004.

American Society for Healthcare Risk Management, "Top Five Conditions Leading to Emergency Room Malpractice Claims," Nashville, TN, 11/2-3/2003.

Lincoln Hospital and Mental Health Center, Emergency Medicine Residency Program Grand Rounds, "Acute Aortic Dissection—Diagnosis and Management", Bronx, NY, 6/4/2003.

Lincoln Hospital and Mental Health Center, Emergency Medicine Residency Program Grand Rounds, "Ethics in Emergency Medicine", Bronx, NY, 11/20/2002

Stamford Hospital Department of Medicine Grand Rounds, "Acute Aortic Dissection—Diagnosis and Management", Stamford, CT., 7/10/2002.

New York Chapter, American College of Emergency Physicians, Annual Scientific Assembly, "Gyn Emergencies" and "Trauma in Pregnancy", Lake George, NY, 7/8/2002.

American Heart Association Conference on Marfan's Disease, New York Academy of Medicine, "Acute Aortic Dissection—Diagnosis and Management", New York, NY, 5/1/2002.

#### **FUNDED RESEARCH**

Co-Principal Investigator, HEW Grant No. 1R01DA00-86-02A

Grant Received March, 1979, National Institute on Drug Abuse, "Improved Reporting Methods for Detecting Utilization of Health Resources Because of Complications of Drug Abuse"

Revised 10/12/07

Expert Witness Trial and Deposition Testimony, 2003--2008  
Diane Sixsmith, M.D.

Armitage, Carl (Kreisman-Medical Legal Evaluation)—Deposition, NJ, 10/27/06

Babb, Crystal (Gary Wais)—Deposition, Maryland, 6/20/07.

Bartholomew, Emily (Kennedy, Johnson)—Deposition, CT., 9/15/06

Beattie, Allan (Jacques)-Deposition, CT., 2/6/03, Trial, CT, 10/8/03

Blumenthal v Augustin (Pilkington & Leggett)-Trial, Monticello, NY, 1/17/03,

Bovell (Andel) Deposition, New Jersey, October 23, 2001, Trial, Passaic County,  
1/14/04

Brooks, Gerrod (Gary Wais)—Deposition, 7/1/03, Maryland

Bueno v. Keefer (Peltz & Walker)-Trial, New York County, 1/16/03

Carson, Barbara v. Janicke (Paul Beltz)—Trial, Buffalo, NY, 5/2/07

Choi, Samuel (Blume,Goldfaden)—Deposition, March 21, 2003, May 20, 2003,

Curzi, Dewey v. Warren Hospital (Arthur J. Russo) Deposition, October 29,  
2004, Phillipsburg, NJ

Davis, Rodney (State of NY—Criminal)—Trial, April 30, 2007, NY Cty

DeJesus, Ruby (Littlepage)-Deposition, Maryland, 4/19/06

Doorandish (Hillman Brown)-Trial, Annapolis, MD., 2/11/03, Closed

Fuller-Baker, Kenyon (Meisrow & Stravitz)—Deposition, MD, 8/10/04

Gardner, Linda (Richard Lenter)-Deposition, 9/11/06 (Michigan)

Giangeruso, Michael (Eichen, Levinson)-Deposition (NJ)—8/22/06

Gibbs, Eugenia v. Kovachs, et al (Kline & Specter)—Deposition, NJ, 11/18/05

Hammons,Susan (Peter Ervin)-Deposition, Louisville, KY, 5/12/06

Harris v. South Nassau (Bartlett)—Trial, Nassau County, 8/16/04

Harris, John (Kolsby Gordon)—Trial, Philadelphia, 6/27/06

Holcomb, Charles (Andel)—Trial, Philadelphia, April 14, 2003

Jacoby, Toby (Harry I. Kate)—Trial, Nassau Cty, 10/7/05

Jett, Christa (Blume,Goldfaden)—Deposition, NJ, 4/2/03

Jones, Jeffrey (Cardaro & Peek)—Deposition, 10/20/06, Baltimore, Maryland

Jones, Linda (Littlepage)—Deposition, 9/30/05, Maryland

Kresky, Lawrence (Andel-Colleran)—Deposition, Pa, 4/16/04

Lahtinen v. Allyne (Pilkington & Leggett)—Trial, Orange County, NY, 9/18/03

LaSalle, Joe (Eshelman Legal Group)-Trial, Akron,OH, 3/2/06

Lanza v. Westchester County Medical Center Trial, White Plains, July 15, 2004

Loyd, Dorothy v. Cass Medical Center (Dempsey & Kingsland)—Deposition,  
10/24/06, Jackson Cty, Missouri, Trial, Jackson Cty, 4/17-18/07

Massey, Norma (Andel)-Deposition, 11/02/05 North Carolina

Mathews, Lori (Andel-Kline)—Deposition, May 14, 2004

McKeever vs. Polizzi.(Wingate)-Trial, 2/16/06, Bronx

McKenstry v. UMMSC, et al (Snyder, Weltchek) Deposition, Baltimore, MD, 12/7/07

Miller v. Madell and the Cornwall Hospital (Tancredi)—Trial, Goshen, NY,  
12/8/2003

Moyer, Scott v. Aultman Hospital (Harrington, Schweers)-Deposition, Ohio,

**4/25/06**

Olszyk, Christine (Blume, Goldfaden)-Deposition, NJ, 3/2/07

Pauling, Isaiah (Ferraro & Zugibe)—Trial, 4/26 and 4/28/05,

**Rockland County, NY**

Placek v. Community Medical Center (Blume, Goldfaden)—Deposition, Ocean Cty, NJ, 2/26/08

Pepe, Samantha (Kennedy Johnson)—Deposition, CT, 3/9/07

Polis (Andel)—Trial, Doylestown, Pa, (Bucks Cty), 5/25/04

Rosado, Gina v. Montefiore (Wilson)—Trial, Bronx, 2/3/06

Schoch, Kaitlyn (Blume,Goldfaden)-Deposition, NJ, 5/5/06

Spiro, Marilyn (Weiner & Weltchek)—Deposition, MD—9/22/05.

**Trial, Montgomery County, Md., 5/16/06**

Suschenko v. Dyker Emergency Physicians (vonSalis)—Trial,

**Kings Cty, 10/12 and 10/14/ 2004**

Thompson, Stevie (Kline and Specter)—Deposition, NJ, 4/15/04

Watkins, Tamara (Ward & Caggiano)-Deposition, Orlando, Fl—Brevard Cty), 10/18/06

Wetzel, Timothy, Estate of (Meub Associates)—Deposition, Grand Rapids, Michigan, December 12, 2003

Winfree, Daryl (Landers)—Trial, March 2006, Queens Cty

# **EXHIBIT B**

COPY<sup>1</sup>

2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

5 Estate of VALERIE YOUNG, by VIOLA YOUNG, as  
6 Administratrix of the Estate of Valerie Young,  
and in her personal capacity, SIDNEY YOUNG, and  
LORETTA YOUNG LEE,

Plaintiffs,

-against-

Index No.  
9 07CV6241

10 STATE OF NEW YORK OFFICE OF MENTAL RETARDATION  
11 AND DEVELOPMENTAL DISABILITIES, PETER USCHAKOW,  
12 personally and in his official capacity, JAN  
13 WILLIAMSON, personally and in her official  
14 capacity, SURESH ARYA, personally and in his  
official capacity, KATHLEEN FERDINAND, personally  
and in her official capacity, GLORIA HAYES,  
personally and in her official capacity, DR.  
MILOS, personally and in his official capacity,  
Defendants.

18 EXAMINATION BEFORE TRIAL of the  
19 Plaintiff, VIOLA YOUNG, taken by the Defendant,  
20 pursuant to Notice, held at the Office of the  
21 Attorney General, 120 Broadway, New York, New  
22 York 10271, on January 29, 2008, at 10:20 a.m.,  
23 before a Notary Public of the State of New York.

1 V, YOUNG

2 Q. Then during the years, what else in  
3 terms of medical problems did Valerie have? What  
4 medical problems was she diagnosed with?

5 A. Valerie she had surgery one time it  
6 was a like a lymph node. They did surgery on  
7 that.

8 Q. What other medical problems did she  
9 have as the years went by?

10 A. I am not sure what it was.

11 Q. Did you just say, "I am not sure  
12 what it was?" I am not sure that I heard what  
13 you said?

14 A. I am trying to think.

15 Q. Why don't you do it this way. You  
16 were talking about her left arm, sometimes her  
17 right arm. You mentioned the lymph node, any  
18 other parts of her body were causing her  
19 problems?

20 A. (No response).

21 Q. Problems with her legs?

22 A. Oh, yes.

23 Q. When did she first start having  
24 problems with her legs?

25 A. One time Valerie was in the --

Five Star Reporting, Inc.

\*\*\*\*\* Suites in all Boroughs \*\*\*\*\*

(631) 224-5054

1 V, YOUNG

2 Q. We were talking about Valerie's  
3 medical condition while she was at BBC. We were  
4 focusing on her leg. Now, I asked you if they  
5 let you know what was wrong with her leg. Did  
6 they give you a diagnosis? I just want to  
7 clarify what your answer is, did they tell you  
8 and you don't remember?

9 A. I remember the last thing they told  
10 me was that she had a dropped foot. Yes, a  
11 dropped foot and they were getting a brace and  
12 they never did.

13 Q. Did they explain to you what they  
14 meant by dropped foot?

15 A. No.

16 Q. What else did they tell about her?

17 A. All I know is she couldn't walk --  
18 I mean she could walk. They were sending her for  
19 therapy. You know, they let her sit on a  
20 wheelchair too long and they didn't let her  
21 exercise. The only time she walked was when she  
22 went to therapy on Tuesday and Thursday. The  
23 therapist told me that she needed to be walked  
24 around the area during the evening. And they  
25 didn't do that.

# **EXHIBIT C**

1

2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X  
5 Estate of VALERIE YOUNG, by VIOLA YOUNG, as  
6 Administratrix of the Estate of Valerie Young,  
and in her personal capacity, SIDNEY YOUNG, and  
LORETTA YOUNG LEE,

7 Plaintiffs,

8 -against- Index No.  
07CV6241  
9 STATE OF NEW YORK OFFICE OF MENTAL RETARDATION  
10 AND DEVELOPMENTAL DISABILITIES, PETER USCHAKOW,  
personally and in his official capacity, JAN  
11 WILLIAMSON, personally and in her official  
capacity, SURESH ARYA, personally and in his  
official capacity, KATHLEEN FERDINAND, personally  
12 and in her official capacity, GLORIA HAYES,  
personally and in her official capacity, DR.  
13 MILOS, personally and in his official capacity,  
Defendants.

14 -----X  
15

16 EXAMINATION BEFORE TRIAL of the  
17 Plaintiff, LORETTA LEE, taken by the Defendant,  
18 pursuant to Notice, held at the Office of the  
19 Attorney General, 120 Broadway, New York, New  
20 York 10271 on January 28, 2008, at 12:45 p.m.,  
21 before a Notary Public of the State of New York.

22

23

24

25

**COPY**

1 L. LEE

2 A. Because I work during the week and  
3 I always made it my business to at least visit  
4 her once a month.

5 Q. You said you visited her on a  
6 Saturday?

7 A. Yes, that is right.

8 Q. Do you work on Saturday?

9 A. I work Monday to Friday.

10 Q. Did Valerie know who you were when  
11 you visited her?

12 A. Yes, she did.

13 Q. I want to show you a copy of the  
14 complaint that's been filed in this lawsuit.

15 A. Okay.

16 Q. Okay.

17 Why don't you look through all the  
18 pages to make sure what is on each page.

19 A. Okay.

20 Q. When you visited Valerie at the  
21 Brooklyn Development Center, what would she be  
22 doing?

23 A. She would be sitting down.

24 Sometimes she would be walking around. Mostly  
25 she would be sitting.

40

1 L. LEE

2 Q. What problem are you referring to?

3 MR. KAISER: Objection.

4                   A.     She was hopping around. Somebody  
5 had to help her. She couldn't walk.

6 Q. You are referring to the problem  
7 relating to her gait because she would have  
8 problems walking because of one of her legs?

9 A. Yes. Her leg would swell.

10 Q. Why did you sue Brooklyn  
11 Developmental Disabilities Service Office,  
12 Medical Doctor Jovan Milos. M-I-L-O-S?

13 MR. KAISER: Objection.

14                   A.     Because he should have sent her out  
15        for treatment in the beginning to see what was  
16        causing.

17 Q. You mentioned all the other  
18 defendants, you mentioned negligence. Now,  
19 since, he is a doctor, do you feel also medical  
20 practice is that what you are saying?

21 MR. KAISER: Objection.

Q. Is it just negligence as a doctor?

23                   A.     He did not do his job like he was  
24     supposed to have done.   He didn't look into the  
25     situation and sent her out.

L. LEE

42

2 that circle around and they all should have been  
3 aware of what was going on with Valerie.

4 Q. So I am clear. You seem like you  
5 are sure of what was going on with Valerie, but  
6 they weren't. What do you mean they should have  
7 been aware of what was going on with Valerie?

8                   A.     Because you could see Valerie was  
9 having a problem, we saw it and she was there.

10 Q. What kind of problem she was  
11 having?

12                   A.     She was limping. She was having  
13 problems walking. They all saw it. They were  
14 there. We came to visit. She was with them all  
15 the time.

16 Q. Do you think they knew what the  
17 problem was and they decided to ignore it?

18 MR. KAISER: Objection.

19                   A. I don't think they knew what the  
20 problem was. They did not send her out to find  
21 out what the problem was.

22 Q. That is why you feel they are  
23 negligent?

24 A. That is right.

25 MR. KAISER: Objection.

1 L. LEE

2 to this?

3 MR. KAISER: Objection.

4 A. Oh, yes.

5 Q. What did your mother communicate to  
6 the hospital regarding Valerie's leg?

7 MR. KAISER: Objection.

8 A. She would ask them, "Why is Valerie  
9 walking like this?"

10 Q. You know this because your mother  
11 would tell you?

12 A. Yes, and I was there at times when  
13 she would ask.

14 Q. What would be the response that she  
15 got?

16 A. They always told mommy that it was  
17 her dropped foot.

18 Q. So is it fair to say you and your  
19 mother were concerned with her gait, the way she  
20 was walking? You wanted to know what was wrong  
21 with her leg that lead her to walk like that?

22 A. Yes.

23 Q. Prior to June 19, 2005, you weren't  
24 concerned that her gait or the problem with her  
25 leg was going to lead to have her blood clot that

# **EXHIBIT D**

ORIGINAL

1  
2       UNITED STATES DISTRICT COURT  
3       SOUTHERN DISTRICT OF NEW YORK  
4       -----x

5       Estate of VALERIE YOUNG, by VIOLA YOUNG,  
6       as Administratrix of the Estate of  
7       Valerie Young, and in her personal  
8       capacity, SIDNEY YOUNG, and LORETTA  
9       YOUNG LEE,

10      Plaintiffs,

11      Index No.:  
12                          07CV6241  
13      vs.

14      STATE OF NEW YORK OFFICE OF MENTAL  
15      RETARDATION AND DEVELOPMENTAL  
16      DISABILITIES, PETER USCHAKOW,  
17      personally and in his official  
18      capacity, JAN WILLIAMSON, personally  
19      and in her official capacity, SURESH  
20      ARYA, personally and in his official  
21      capacity, KATHLEEN FERDINAND,  
22      personally and in her official  
23      capacity, GLORIA HAYES, personally and  
24      in her official capacity, DR. MILOS,  
25      personally and in his official capacity,

14      Defendants.

15      -----x  
16                          April 11, 2008  
17                          10:06 a.m.

18      Examination before trial of PETER  
19      ALEXANDER USCHAKOW, held at the offices  
20      of The Catafago Law Firm, P.C., 350 Fifth  
21      Avenue, New York, New York, pursuant to  
22      Notice, before Wendy D. Boskind, a  
23      Registered Professional Reporter and  
24      Notary Public of the State of New York.  
25

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

16

1 Uschakow

## 2 recommendation.

3 O. Do you know if -- withdrawn.

7           A.       I do not participate in the  
8 development of the policies and  
9 procedures because eventually I have to  
10 review them.

11 Q. And approve them or  
12 disapprove?

**A. Approve and disapprove.**

14 Q. That's, ultimately, your  
15 responsibility.

**16** | **A.** **Yes.**

17 Q. Do you know if --

18 | A . I --

19 MR. VELEZ: I think he needs  
20 to --

**MR. CATAFAGO:** I'm sorry.

22           A.       At some point in time, I  
23 signed off on policies and procedures  
24 that are developed by a committee. Prior  
25 to that, I reviewed it and allowed the

27

1 | Uschakow

2 not anything had been done following your  
3 discussion with the deputy director?

4           A.       I periodically make rounds of  
5       all of the program areas, and happened to  
6       see Valerie.

7 Q. And you saw her being  
8 assisted with someone?

10 Q. Do you know who was assisting  
11 her?

**12** | **A.** **No.**

13 Q. Was it one person or more  
14 than one?

15 A. I remember one person.

16 Q. Was she using a wheelchair at  
17 the time?

18 A. No.

19 Q. Was the wheelchair beside her  
20 at the time?

21 A. I don't recall seeing it.

22 Q. Did you ever see Valerie  
23 Young in a wheelchair at all?

**24** | A. Yes.

**25** Q. How many times?

1                   **Uschakow**

2                   **A.**        **Yes.**

3                   **Q.**        **Can you read Recommendation**  
4        **number 2 into the record?**

5                   **A.**        **"For non-ambulatory**  
6        **consumers, physicians will consider the**  
7        **use of elastic stockings or pressure**  
8        **boots, where tolerated".**

9                   **Q.**        **Did you consider Valerie**  
10      **Young to be a "non-ambulatory consumer"?**

11                  **A.**        **No.**

12                  **MR. VELEZ:**   **No further**  
13      **questions.**

14                  **(Time noted: 11:37 a.m.)**

15      **BY MR. CATAFAGO:**

16                  **Q.**        **Would you say she was "fully**  
17      **ambulatory"?**

18                  **A.**        **She was gait-impaired.**

19                  **Q.**        **Was she "fully ambulatory"?**

20                  **A.**        **At what period of time?**

21                  **Q.**        **2005.**

22                  **A.**        **She ambulated with**  
23      **assistance.**

24                  **Q.**        **Was she using a wheelchair**  
25      **for any reason, other than**

# **EXHIBIT E**

ORIGINAL

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
5 Estate of VALERIE YOUNG, by VIOLA YOUNG,  
6 as Administratrix of the Estate of  
7 Valerie Young, and in her personal  
8 capacity, SIDNEY YOUNG, and LORETTA  
9 YOUNG LEE,

10 Plaintiffs,

11 Index No.:

12 vs. 07CV6241

13 STATE OF NEW YORK OFFICE OF MENTAL  
14 RETARDATION AND DEVELOPMENTAL  
15 DISABILITIES, PETER USCHAKOW,  
16 personally and in his official  
17 capacity, JAN WILLIAMSON, personally  
18 and in her official capacity, SURESH  
19 ARYA, personally and in his official  
20 capacity, KATHLEEN FERDINAND,  
21 personally and in her official  
22 capacity, GLORIA HAYES, personally and  
23 in her official capacity, DR. MILOS,  
24 personally and in his official capacity,

25 Defendants.

26 -----x  
27 April 10, 2008

28 10:09 a.m.

29 Examination before trial of JAN  
30 WILLIAMSON, held at the offices of The  
31 Catafago Law Firm, P.C., 350 Fifth  
32 Avenue, New York, New York, pursuant to  
33 Notice, before Wendy D. Boskind, a  
34 Registered Professional Reporter and  
35 Notary Public of the State of New York.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1. Williamson

2. Q. How long were you a treatment  
3. team leader at BDC?

4. A. From 2001 until September --  
5. well, actually, until -- 2006, I think --  
6. I was the acting deputy director until it  
7. was approved to be -- so I held the team  
8. leader item, in terms of Civil Service,  
9. but I was the acting deputy director.

10. Q. So you were the acting deputy  
11. director of BDC from in or about  
12. September 2004 until 2006.

13. A. It was late 2005 or early  
14. 2006, it was a long time.

15. The government moves slow.

16. Q. Was anyone else an acting  
17. director -- deputy director of operations  
18. at the same time that you were?

19. A. No.

20. Q. And why were you acting, as  
21. opposed to actual?

22. A. Higher-level positions within  
23. Civil Service require the approval and  
24. support of the governor, so it's when the  
25. governor chooses to make it official.

1                   Williamson

2                   Q.        Okay.

3                   A.        It's an on as-needed basis.

4                   Q.        As deputy director of  
5 operations, from September 2004 through  
6 June 30th, 2005, did you ever review any  
7 of the records pertaining to the  
8 treatment and care of Valerie Young?

9                   A.        No.

10                  Q.        Did you ever ask to review  
11 any of those records?

12                  A.        No.

13                  Q.        Did you ever speak to Peter  
14 Uschakow about Valerie Young, or he to  
15 you?

16                  A.        Wow --

17                  Q.        If you know.

18                  A.        I don't remember.

19                  Q.        Did you ever speak to any  
20 member of Valerie's family?

21                  A.        No -- um -- you know what? I  
22 don't remember if I spoke to her mom or  
23 not on the phone.

24                  Q.        Did you ever -- while you  
25 were deputy director of operations, from

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

# **EXHIBIT F**

ORIGINAL

1

2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
5 Estate of VALERIE YOUNG, by VIOLA YOUNG,  
6 as Administratrix of the Estate of  
7 Valerie Young, and in her personal  
8 capacity, SIDNEY YOUNG, and LORETTA  
9 YOUNG LEE,

10 Plaintiffs,

11 Index No.:

12 vs. 07CV6241

13 STATE OF NEW YORK OFFICE OF MENTAL  
14 RETARDATION AND DEVELOPMENTAL  
15 DISABILITIES, PETER USCHAKOW,  
16 personally and in his official  
17 capacity, JAN WILLIAMSON, personally  
18 and in her official capacity, SURESH  
19 ARYA, personally and in his official  
20 capacity, KATHLEEN FERDINAND,  
21 personally and in her official  
22 capacity, GLORIA HAYES, personally and  
23 in her official capacity, DR. MILOS,  
24 personally and in his official capacity,

25 Defendants.

-----x  
1 April 7, 2008

2 10:11 a.m.

3 Examination before trial of KATHLEEN  
4 A. FERDINAND, held at the offices of The  
5 Catafago Law Firm, P.C., 350 Fifth Avenue,  
6 New York, New York, pursuant to Notice,  
7 before Wendy D. Boskind, a Registered  
8 Professional Reporter and Notary Public  
9 of the State of New York.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

35

## Ferdinand

the time --

A. She was using a wheelchair for transport.

Q. Only for transport.

A. To transport to and from  
program.

Q. Was she using a wheelchair  
for any other reason?

**A .**                   **N O .**

Q. Did you ever see anyone walk  
with her?

A . Yes .

Q. Assist her walking?

15 A. Yes, staff would have to  
16 assist her in walking.

17 Q. Did you ever personally  
18 observe her --

**A .**              **Y e s .**

20 Q. Which staff members did you  
21 personally observe walking her?

22 A. Oh, God, you're asking me to  
23 remember --

**Q.** Yes.

**A.** I can't remember -- I don't

1 Ferdinand

2 Young 109.

3 (Deposition Exhibit

4 Plaintiffs' Ferdinand 9, document,  
5 Bates stamped Young 108, Young 109,  
6 marked for identification, as of  
7 this date.)

8 A. That particular document --  
9 let me just go back a minute -- that  
10 particular document -- um -- I think  
11 there was a recommendation in there that  
12 PT was going to re-evaluate her, too;  
13 wasn't there?

14 Q. You're referring to Exhibit  
15 8?

16 A. Yes.

17 Q. Let me show you Exhibit 8.  
18 Tell me what you need to  
19 about Exhibit 8.

20 A. (Pause.)

21 Yeah, just the second line, I  
22 want to be very clear that the physician  
23 recommended continued use of a wheelchair  
24 until PT was going to re-evaluate her,  
25 okay?

1                   Ferdinand

2                 Q.     Say it again?

3                 A.     They were going to  
4 re-evaluate her, her ability to ambulate.

5                 Q.     When were they going to do  
6 that?

7                 A.     Right after this meeting.

8                 Q.     Do you know if they did it  
9 after this meeting?

10                A.     I don't remember.

11                Q.     They were supposed to?

12                A.     They were supposed to.

13                Q.     And that was the  
14 responsibility of PT, the physical  
15 therapist?

16                A.     Yes.

17                Q.     Did they attend the meeting,  
18 as indicated on Exhibit 8?

19                A.     I believe they were there --  
20 yeah -- yes, (indicating), right there.

21                Q.     You're indicating the  
22 signature line on the first page of  
23 Exhibit 8?

24                A.     Is my signature here,  
25 (indicating)?

80

1 | Ferdinand

2           Q.     In this Special incident  
3     review committee report, it is indicated,  
4     and I quote: "It was also noted that,  
5     fearing she might fall, staff may not  
6     have encouraged Ms. Young to walk",  
7     period, closed quote.

8                           Do you agree with that, that  
9 the staff didn't encourage her to walk,  
10 prior to her death?

11                   A.     I don't necessarily agree  
12 with that, no.

13 Q. And what about the sentence  
14 that reads: "Ms. Young had a history of  
15 pitting edema", do you know what that  
16 means?

A. Well, I know what "edema" is,  
it's swelling.

19 Q. Do you know if she had a  
20 history of pitting edema?

21 A. I have no idea.

22 Q. And it says --

23           A.       I don't know what "pitting  
24        edema" is, by the way.

25 Q. At the time of her death,

81

## Ferdinand

2 June 19th, 2005, was Ms. Young  
3 ambulatory?

4 A. Was she -- she could walk,  
5 yes.

6 Q. Did anyone ever consider  
7 using elastic stockings for her?

8 A. I really don't know that.

9                   That would have been ordered  
10 by the doctor.

11 Q. Was that ever discussed with  
12 you, as --

**13**                   **A.**                   **No.**

14 O. -- treatment team leader?

15 A.

16 that she had pitting edema, to tell you  
17 the truth.

18 Q. And --

19                  A.        I don't remember it being  
20 discussed.

21 Q. Going back, how often in June  
22 of 2005 did you observe staff walking  
23 with Ms. Young?

24 A. You really expect me to  
25 remember that?

104

1 Ferdinand

2 believe, that she found it when she was  
3 braiding -- doing her hair.

4 Q. And there was no --  
5 ultimately, there was insufficient  
6 evidence to support any allegation of  
7 neglect?

8 A. I think that's --

9 Q. I'm reading from 0208.

10 A. Yeah, I think that was the  
11 final finding.

12 Q. And in the conclusions, 0208,  
13 0209, this is as of May 26, 2005 --

14 A. Mm-hmm.

15 Q. -- it says, and I quote:  
16 "Ms. Young was unstable at that time and,  
17 although she can ambulate independently,  
18 she required the use of a wheelchair".

19 Was that something that you  
20 were aware of at the time?

21 A. Where are you reading now?

22 Q. 0208 to 0209.

23 A. (Pause.)

24 Okay. And I see it's in  
25 writing, so I guess that's what was going

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

105

1 Ferdinand

2 on at the time.

3 Q. And what about the next page,  
4 0210, what is -- that's the -- this is  
5 attendees at the meeting regarding the  
6 incident; right?

7 A. Right.

8 Q. And you were there?

9 A. Yes, I was there.

10 Q. And ultimately, although Ms.  
11 Daly was returned to work assignment,  
12 there was a finding, was there not, that  
13 the other direct care worker, Toni,  
14 T-O-N-I, McNeil, had failed to properly  
15 supervise her attending -- assigned  
16 supervisory duties.

17 I'm reading from 0209.

18 A. (Pause.)

19 Yes.

20 Q. And do you recognize the --  
21 that portion of the document which is  
22 Bates stamped 0212?

23 A. 0212 -- (pause).

24 Q. Was that something you  
25 prepared?

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

146

1                   Ferdinand

2 tolerated"? Did you agree with that?

3                 A. Yeah, I guess there is no  
4 reason not to agree with it.

5                 Q. Do you know whether Dr. Milos  
6 ever considered the use of elastic  
7 stockings for Valerie Young?

8                   MR. VELEZ: Objection.

9                 A. Well --

10                  MR. VELEZ: But you can  
11 answer.

12                 A. Well, Valerie wasn't non-  
13 ambulatory, so I don't know whether he  
14 ever ordered stockings for her or not, I  
15 don't --

16                 Q. Did he or anyone else ever  
17 discuss with you the use, or potential  
18 use, of elastic stockings for Valerie  
19 Young?

20                 A. No.

21                 Q. Did he or anyone else at  
22 OMRDD ever discuss with you, or you with  
23 them, the need to walk Valerie Young when  
24 she had the wheelchair?

25                 A. No, because she was walking.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

147

1                   Ferdinand

2       She was walking at times. She wasn't  
3       just sitting in the wheelchair all the  
4       time.

5       Q.     How many times a day was she  
6       walked?

7       A.     How many times a day was she  
8       walked? She was periodically walked.  
9       She would walk in program.

10                  Again, the wheelchair was  
11       basically used for transport.

12       Q.     Well, how many minutes or  
13       hours a day would she walk typically --

14       A.     I don't know.

15       Q.     -- in May of 2005?

16       A.     I can't tell you how many  
17       times.

18       Q.     Can you tell me in any of the  
19       months preceding her death --

20       A.     I have no idea. I can't  
21       remember.

22       Q.     That's fair.

23       MR. CATAFAGO: Let's have  
24       this two-page document, Bates  
25       stamped Young 0013 and Young 0266,

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

227

Ferdinand  
each discipline discuss their findings and recommendations, and then there's a team discussion. So my job, as the team leader, is to make sure all the team consensus really gets into the minutes.

Q. Did you believe that as of that time, in April 2004, that Valerie was fully ambulatory?

A. Yes, I do. If the wheelchair was discontinued.

Q. Did there come a time when you believed that she was no longer fully ambulatory?

A. Uh -- there must -- yes,  
there must -- well, when she was falling  
a lot.

Q. When was that? When did you come to believe that she was no longer fully ambulatory?

A. She was ambulatory, but she was falling a lot.

Q. Well, take a look at --

A. That's why I said, she was ambulatory but she had been falling an

230

1                   Ferdinand

2           A.     It says -- under where?

3           Q.     "Stress."

4                   MR. VELEZ: (Indicating.)

5           A.     Right. It says "fully  
6 ambulatory", but it also says at the top  
7 that she "continues to require close  
8 supervision when walking to and from  
9 facilities, social events, due to her  
10 non-compliant behavior".

11          Q.     Right. What was your  
12 understanding of "fully ambulatory"?

13          A.     She was able to walk.

14          Q.     And what is "has full ROM in  
15 all her extremities"? "ROM", what does  
16 that mean?

17          A.     Range of motion.

18          Q.     And was it your understanding  
19 that she could walk with assistance at  
20 that time?

21          A.     Yes.

22                   (Deposition Exhibit

23                   Plaintiffs' Milos 2, document,  
24                   which looks like an IPP review  
25                   reading on July 20th, 2004, Bates

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

238

1 Ferdinand  
2 coordinator, who is recording the  
3 meeting, would record anything that was  
4 going on with physical therapy in that  
5 area.

6 Q. Did Valerie Young ever  
7 receive physical therapy at any point in  
8 2004?

9                   A.        Didn't we just -- I don't  
10 remember.

Q. Did she receive physical therapy at any point in 2005?

A. I don't remember.

Q. Did you ever correct this --

15 A. In 2005, she did get physical  
16 therapy.

17 Q. When in 2005 did she get  
18 physical therapy?

19 A. I don't know.

20 I don't have the whole record  
21 in front of me.

22 Q. Well, what you have in front  
23 of you, ma'am, indicates that your team  
24 recommends integration of the following  
25 services.

# **EXHIBIT G**

ORIGINAL

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 - - - - -  
5 Estate of VALERIE YOUNG, by VIOLA  
6 YOUNG, as Administratrix of the  
7 Estate of Valerie Young, and LORETTA  
8 YOUNG LEE,  
9

10 Plaintiffs,

11 -against-

12 STATE OF NEW YORK OFFICE OF MENTAL  
13 RETARDATION AND DEVELOPMENTAL  
14 DISABILITIES, PETER USCHAKOW,  
15 personally and in his official  
capacity, JAN WILLIAMSON, personally  
and in her official capacity, SURESH  
ARYA, personally and in his individual  
capacity, KATHLEEN FERDINAND,  
personally and in her official  
capacity, GLORIA HAYES, personally  
and in her official capacity,  
DR. MILOS, personally and in his  
official capacity,

16 Defendants.

17 - - - - -  
18 75 Morton Street  
19 New York, New York  
20 April 18, 2008  
21 10:25 A.M.  
22  
23  
24  
25

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1  
2       **DEPOSITION of GLORIA HAYES, one of the**  
3 **Defendants in the above-entitled action,**  
4 **held at the above time and place, taken**  
5 **before Gretchen A. Milton, a Shorthand**  
6 **Reporter and Notary Public of the State of**  
7 **New York, pursuant to the Federal Rules of**  
8 **Civil Procedure, Notice and stipulations**  
9 **between Counsel.**

10

11

12                   \*                   \*

13

14

15 **APPEARANCES:**

16

17       **CATAFAGO LAW FIRM, P.C.**

18

19       **Attorneys for Plaintiffs**

20

21       **350 Fifth Avenue**

22

23       **New York, New York 10118**

24

25       **BY: JACQUES CATAFAGO, ESQ.**

21

22       **STATE OF NEW YORK**

23

24       **OFFICE OF THE ATTORNEY GENERAL**

25

21       **ANDREW M. CUOMO**

22

23       **Attorneys for Defendants**

24

25       **120 Broadway**

21

22       **New York, New York 10271-0332**

23

24       **BY: JOSE L. VELEZ, ESQ.**

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1 GLORIA HAYES

2 communicated to you?

3 A. From my team leader with a team  
4 meeting.

5 Q. Are you aware of any special  
6 precautions that were ever discussed with  
7 you regard to Valerie Young prior to her  
8 death?

9 A. I recall her having to be  
10 transported in a wheelchair. But she was  
11 being ambulated when she wasn't being  
12 transported, or when she didn't have to  
13 use the wheelchair for any special  
14 reasons.

15 Q. Would you say Valerie Young was  
16 fully ambulatory, somewhat ambulatory, or  
17 not all ambulatory in the month before her  
18 death?

19 A. In the month before... I don't  
20 know the time, but she was fully  
21 ambulatory. And then she needed a  
22 wheelchair. I don't know how long before  
23 her death it was, I don't remember, but  
24 she needed a wheelchair for transport.

25 Q. Do you remember if she received

1 GLORIA HAYES

2 any physical therapy in the year before  
3 her death?

4 A. She received physical therapy,  
5 yes.

6 Q. When was the last time, if you  
7 know, that she received physical therapy?

8 A. I don't remember.

9 Q. Can you tell us if it was more or  
10 less than three months before her death,  
11 if you can?

12 A. I believe it was less than three  
months before her death.

14 Q. How do you know she received  
15 physical therapy?

16 A. Because any time something was  
going to be done, we have a team meeting.

18 Q. Other than the fact that it may  
19 have been discussed or was discussed at a  
20 team meeting, do you have any personal  
21 knowledge of her receiving physical  
22 therapy?

23 A. Yes. She would be taken to PT.

24 Q. You know she would have been  
25 taken --

140

1 GLORIA HAYES

2 Q. She injured her eye?

3 A. Yes.

4 Q. Do you remember what, if  
5 anything, was done in response to this?

6 A. I don't remember.

7 Q. I will show you now what has been  
8 marked Exhibit AAA, Bates stamped Young  
9 9079 through 9081, it is a report on an  
10 incident that occurred March 28, 2005.

11 Do you recognize this document?

12 A. I don't recall.

13 Q. Showing you this document, it is  
14 another incident report which has been  
15 marked as Hayes Exhibit BBB, Bates stamped  
16 Young 9082 through 9084. It is regarding  
17 an incident that occurred on April 5,  
18 2005. Please tell me if you recognize  
19 that document.

20 A. I don't recall it.

21 Q. When was it that you first became  
22 aware that Valerie was receiving physical  
23 therapy?

24 A. I don't know. I mean I can't  
25 remember exactly when it was.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

142

1 GLORIA HAYES

2 therapists?

3 A. The physical therapist at the IDT  
4 meeting?

5 Q. The physical therapist that told  
6 you she was providing physical therapy to  
7 Valerie Young.

8 A. Yes.

9 Q. Looking at the IDT report for  
10 April 2005 which was previously marked as  
11 Plaintiffs' Exhibit 4 at the deposition of  
12 Dr. Milos on March 27th, and it is Bates  
13 stamped Young 7626 through 7682, I direct  
14 your attention to the next-to-last page of  
15 the document Bates stamped 7681. It was a  
16 report for Valerie for 2005.

17 A. Yes.

18 Q. Is correct to say that no report  
19 was prepared subsequent to this one  
20 because they were done on a quarterly  
21 basis; is that right?

22 So the next one would have been  
23 done in July 2005; is that correct?

24 A. This is an annual. An annual is  
25 done yearly.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

146

1                   GLORIA HAYES

2                   A. I don't recognize the document,  
3 but I remember the incident.

4                   Q. Tell me what you remember about  
5 this incident.

6                   A. I remember staff saying they  
7 heard a thumping noise, so they went to  
8 investigate, and Valerie Young was on the  
9 floor, so they suspected she fell. From  
10 her bed.

11                  Q. Can you tell me what, if  
12 anything, was done in response to this  
13 incident?

14                  A. No. I can't tell you. I don't  
15 remember.

16                  Q. Where was physical therapy  
17 administered?

18                  A. In building 5.

19                  Q. They have a room in building 5?

20                  A. In building 5, yes.

21                  Q. How many times, when Valerie was  
22 getting physical therapy, how many times a  
23 day or week was she going?

24                  MR. VELEZ: Objection, asked and  
25 answered.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

148

1 GLORIA HAYES

2 Valerie's ability to walk, was that  
3 discussed at the meeting?

4 A. Repeat that, please.

5 MR. CATAFAGO: Please read that  
6 back.

7 (The requested portion of the  
8 record was read.)

9 MR. CATAFAGO: Mr. Velez, don't  
10 do that.

11 Let me withdraw the question.

12 Q. As of April 13, 2005, was Valerie  
13 Young fully ambulatory with good range of  
14 motion in her extremities?

15 A. As of April 13th... I don't  
16 remember exactly when during that time,  
17 but Valerie could ambulate. She was given  
18 the chair at certain points for  
19 transporting her around the wing to and  
20 from program or whatever, but staff would  
21 walk her. She sometimes -- many times --  
22 she would get up by herself.

23 Q. Was she fully ambulatory around  
24 April 13th --

25 A. I can't recall the date.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400